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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,769	09/27/2005	Mitchell Joe Dodson	1557-4 PCT/US/RCE II	1779
23869	7590	08/30/2010	EXAMINER	
Hoffmann & Baron, LLP 6900 Jericho Turnpike Syosset, NY 11791			KIM, CHRISTOPHER S	
			ART UNIT	PAPER NUMBER
			3752	
			MAIL DATE	DELIVERY MODE
			08/30/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/550,769	DODSON, MITCHELL JOE	
	Examiner	Art Unit	
	Christopher S. Kim	3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 16 December 2009.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 5-12, 14-22 and 25 is/are pending in the application.
 4a) Of the above claim(s) 12 and 14-22 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 5-11 and 25 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Response to Amendment

1. The response filed July 14, 2010 is acknowledged.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Election/Restrictions

3. Applicant elected with traverse Group I in the reply filed on March 26, 2008. The requirement was made FINAL in the Office action mailed on April 9, 2008.
4. Claims 12, 14-22 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on March 26, 2008.

Claim Rejections - 35 USC § 112

5. Claims 5-11 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "smooth" in claim 9 is a relative term which renders the claim indefinite. The term "smooth" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would

not be reasonably apprised of the scope of the invention. It is uncertain what texture is limited by the claim.

The term "smooth" in claim 10 is a relative term which renders the claim indefinite. The term "smooth" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is uncertain what texture is limited by the claim.

Claim Rejections - 35 USC § 102

6. Claims 5-7, 10, 11 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Higgins (816,470).

Higgins discloses a nozzle comprising:

a T-piece having:

a leg 5;

an elongate head pipe 9 having a longitudinal axis (horizontal axis in figures 1 and 2) and an internal curvature (internal curvature of 9 that accommodates plugs 10 and 11);

an aperture 7;

two pins 10, 11.

Claim Rejections - 35 USC § 103

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Higgins (816,470).

Higgins discloses the limitations of the claimed invention with the exception of the fluid passageway having the same diameter as the cross member. Although Higgins discloses, on page 1, lines 65-68, that the size of the nozzle at its discharge end is increased to accommodate said apertures 9 and plugs 10, 11 and insure structural strength, Higgins does not specifically disclose the internal diameters of the fluid passage and the cross member. It is knowledge within one of ordinary skill in the art to size fluid passages. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have sized the internal diameter of the fluid passage and cross member to maintain constant fluid volume.

Response to Arguments

8. Applicant's arguments filed October 29, 2009 have been fully considered but they are not persuasive.

Applicant argues that Higgins does not disclose flat end faces. Higgins discloses flat end faces (end face of discharge passage 14) of pins 10, 11.

Applicant argues that Higgins fails to disclose a nozzle producing a flat spray pattern that is parallel to the longitudinal axis of the elongated head pipe. The recitation "to produce a flat spray pattern which is substantially parallel to the longtidunal axis of the elongated head pipe" is functional and merely requires the ability to so perform. Higgins' nozzle has the ability to produce the flat spray pattern by manipulation of plugs

10, 11 and openings 13, 14. While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function.

Applicant argues that Higgins does not disclose the elongate head pipe having a smooth bore. In figure 1 of Higgins, the bore of the head pipe (having openings 9) is shown as smooth between surface 12 and plug 11.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. Kim whose telephone number is (571)

272-4905. The examiner can normally be reached on Monday - Friday, 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on (571) 272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher S. Kim/
Primary Examiner, Art Unit 3752

CK